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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-165328-04

Date: OCTOBER 16, 2006

Re:

LEGEND:

Decedent -

Trust -

Date 1 -

Date 2 -

CPA -

Date 3 -

State -

Dear :

This is in response to your letter dated July 27, 2006, and prior correspondence requesting an extension of time under section 301.9100 of the Procedure and Administration Regulations to make a qualified family-owned business election under section 2057(b)(1)(B) of the Internal Revenue Code.

The facts submitted and representations made are as follows. Decedent died on Date 1. Decedent's gross estate consisted primarily of an interest in a dairy farm and operation. Decedent was survived by spouse and children. Decedent's estate hired CPA to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. CPA concluded that the estate did not satisfy the test under section 2057(b)(1)(C) and therefore, did not qualify for the Qualified Family-Owned Business Interest (QFOBI) Deduction. Therefore, the election under section 2057(b)(1)(B) was not made on the estate tax return that was filed on Date 2. Subsequently, CPA reviewed his calculations and determined that the estate did meet the requirements of section 2057(b)(1)(C). On Date 3 the estate filed supplemental information on Form 706 making the QFOBI election.

The estate requests an extension of time under sections 301.9100-1 and 301.9100-3 to make the section 2057 election.

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2057(a)(1) provides that for purposes of the tax imposed by section 2001, in the case of an estate of a decedent to which this section applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the qualified family-owned business interests of the decedent.

Section 2057(a)(2) provides that the deduction allowed by section 2057 shall not exceed \$675,000.

Section 2057(b)(1) provides, generally, that section 2057 shall apply to an estate if (A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States, (B) the executor elects the application of this section and files the agreement referred to in section 2057(h), (C) the sum of the adjusted value of the qualified family-owned business interests described in section 2057(b)(2), plus the amount of the gifts of such interests determined under section 2057(b)(3), exceeds 50 percent of the adjusted gross estate, and (D) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which such interests were owned by the decedent or a member of the decedent's family, and there was material participation (within the meaning of section 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

Section 2057(b)(2) provides that the qualified family-owned business interests described in this paragraph are the interests which are included in determining the value of the gross estate, and are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of section 2032A(e)(9)).

Section 2057(e)(1) provides, generally, that for purposes of section 2057, the term "qualified family-owned business interest" means an interest as a proprietor in a trade or business carried on as a proprietorship, or an interest in an entity carrying on a trade or business, if: (1) at least 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family; (2) at least 70 percent of such entity is so owned by members of 2 families and at least 30 percent of such entity is so owned by the decedent and members of the decedent's family; or (3) at least 90 percent of such entity is so owned by members of 3 families, and, at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

Section 2057(i)(3)(H) provides that, for purposes of making the election and filing the agreement under section 2057(b)(1)(B), rules similar to the rules under section

2032A(d)(1) and (3) (regarding the election of special use valuation of farm and other qualified real property) shall apply.

Section 2057(j) provides that Section 2057 will not apply to estates of decedent's dying after December 31, 2003.

Under section 301.9100-1(c) of the Procedure and Administration Regulations, the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Requests for relief under section 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(iii) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) provides that the interests of the Government are normally prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based on the facts submitted and the representations made, we conclude that the Taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government. Therefore, an extension of time to Date 3 is granted for making an election under section 2057.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. In particular,

the burden is on the estate to establish to the Service's satisfaction that all of the requirements of section 2057 are met.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we express or imply no opinion on whether the estate qualifies for the deduction under section 2057.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special
Industries)

Enclosures

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